

(2003) 12 MAD CK 0047

In the Madras High Court

Case No : Civil Revision Petition No. 1125 of 2002 and C.M.P. No. 9438 of 2002

G. Rajendran

APPELLANT

Vs

The President, Sri Achuthanananda Swamy Bajanai Madam

RESPONDENT

Date of Decision : 17-12-2003

Acts Referred:

Constitution of India, 1950 — Article 227

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2), 11(3), 11(4)

Citation : (2003) 12 MAD CK 0047

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : D. Rajendiran, for the Appellant; A. Anbarasu, for the Respondent

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—The above Civil Revision Petition has been filed against the fair and decretal order dated 3.6.2002 made in I.A. No. 20

of 2001 in R.C.O.P. No. 3 of 2000 by the Court of District Munsif, Polur.

2. Tracing the history of the case, what comes to be known is that the petitioner is the tenant and the respondent is the landlord; that the

respondent filed R.C.O.P. No. 3 of 2000 on the file of the Court of District Munsif, Polur, u/s 10(2) of the Tamil Nadu Buildings (Lease and Rent

Control) Act for eviction of the petitioner on the ground of wilful default; that pending R.C.O.P. the landlord has filed an application in I.A. No. 20

of 2001 u/s 11(4) of the TNB(L&R) Act praying to deposit a sum of Rs. 17,640/- towards he arrears of rent in which the petitioner/tenant filed

counter affidavit stating that he had no arrears of rent and he wanted the landlord to produce the accounts. Apart from that the landlord also filed a

suit in O.S. No. 53 of 2001 on the file of the very same court, the District Munsif,

Polur, for recovery of a sum of Rs. 17,640/- towards the arrears of rent from the petitioner/tenant; that in that suit also the petitioner filed written statement stating that there was no arrears of rent and he was paying the rent regularly; that the Rent Controller without considering the various disputes regarding the arrears of rent between the petitioner and the respondent had passed an order directing the petitioner to pay the arrears of rent, failing which the R.C.O.P. would stand automatically allowed. It is only testifying the validity of the said order, the petitioner has come forward to file this Civil Revision Petition under Article 227 of the Constitution of India on certain grounds as brought forth in the grounds of revision.

3. During arguments, the learned counsel for the petitioner would submit that the trial Court has not considered the object of the Section 11 of the Act and the and has not exercised the jurisdiction properly while disposing the application, erred in ordering eviction; that the court below failed to follow the procedure as contemplated u/s 11(3) of the Act while passing the order and without giving findings u/s 11(3), the order passed by the court below is nothing but excess of exercising jurisdiction and that the very application itself filed u/s 11(4) of the Act is not maintainable, as per the decision of this Court; that the application ought to have filed only u/s 11(3) of the Act; that the court below is not right in passing the simultaneous order to pay the rent and failing which to deliver possession which is virtually two orders in the application which was not filed for that purpose by the respondent; that the court below failed to appreciate the legal submission that the very Rent Control proceedings is not maintainable by the Trust; that the court below failed to consider the fact that the respondent has already filed a suit for recovery of the arrears of rent before the Court of District Munsif, the petition for depositing the arrears of rent is not maintainable. At this juncture, the learned counsel for the petitioner would cite a judgment reported in Mohammed Niyamathullah Vs. V. Sahitha, wherein it has been held:

A careful reading of these sub-sections 11(3) and 11(4) would obviously mean that an enquiry has got to be held u/s 11(3) of the Act, when there is any dispute as to the amount of rent to be paid or deposited u/s 11(1). On application made either by the tenant or landlord, and after making

enquiry, the Court shall determine summarily the rent to be so paid/deposited. If the above said order is not complied with, the Rent

Controller/Appellate Authority as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and

make an order directing the tenant to put the landlord in possession of the buildings u/s 11(4) of the Act. But, Section 11(4) does not say/prescribe

a separate application to be filed under the said Section. That means an application has to be made only u/s 11(3) of the Act, and if the order

passed u/s 11(3) is not complied with, it is automatic for the Rent Controller to pass an order to stop all further proceedings and direct the tenant

to put the landlord in possession of the buildings and the said order has got to be passed u/s 11(4) of the Act.

4. On the other hand, the learned counsel for the respondent would submit that at the time of admission of the above Civil Revision Petition, while

granting ad interim stay, this Court has directed the petitioner herein to deposit the balance arrears of rent and as per the directions of this Court

made in C.M.P. No. 9438 of 2002 the petitioner deposited the entire amount towards the arrears of rent. Further submitting that the lower Court

has considered all the facts and circumstances of the case in the manner acceptable by law, and hence, he would pray to dismiss the above Civil

Revision Petition. He would further submit that in the event of the trial court not accepting his contentions a direction may be issued to the court

below to dispose of the R.C.O.P. in a time bound manner.

5. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what

comes to be known is that it is an Interlocutory Application filed by the landlord pending disposal of the main RCOP praying to direct the

respondent to deposit the arrears of rent and after depositing the arrears of rent to commence the trial under the Tamil Nadu Buildings (Lease and

Rent Control) Act on certain averments such as that the arrears are huge which calculated to Rs. 17,640/= up to 1.1.2000; that the respondent in

response to an Advocate's notice sent only a sum of Rs. 5,000/= and therefore the respondent shall not be entitled to contest the main RCOP

unless he pays the arrears as per the meaning of Section 11 of the Act; that the arrears are calculated from 1.1.1998 to 1.1.2000 further stating

that if the respondent pays the entire arrears of the rent, outstanding as on date, the petitioner was willing to withdraw the suit in O.S. No. 53 of

2001 and has prayed for an order to that extent.

6. The Rent Controller, having gone into the question elaborately and assessing the facts and circumstances in detail and appreciating the materials

placed on record and further taking into consideration of the huge arrears of rent till 1.1.2000 i.e. Rs. 17,640/=, has ordered the same to be

deposited or paid in favour of the landlord on or before 3.7.2002 failing which the main RCOP would be ordered directing the tenant to put the

landlord in possession of the building with costs. It is against this order the petitioner/tenant has come forward to file the above civil revision

petition.

7. A careful perusal of the proceeding of the trial Court so far as the I.A. filed by the landlord against the tenant is concerned, during enquiry,

though no oral evidence has been let in by both sides, parties would mark documents. On the part of the landlord therein, he would mark ten

documents as Exs.P.1 to P.10 and on the part of the tenant, he would mark 14 documents as Exs.R.1 to R.14.

8. So far as the exhibits marked on the part of the petitioner/landlord are concerned, Ex.P.1 dated 13.9.2000 is the notice issued by the

respondent/tenant's counsel, Ex.P.2 dated 25.9.2000 is the reply notice issued by the landlord's counsel; Ex.P.3 is the acknowledgement card,

Ex.P.4 dated 23.2.2000 is the notice issued by the landlord to the tenant, Ex.P.5 dated 31.7.2000 is the office copy of the lawyer's notice sent by

the landlord, Ex.P.6 dated 11.8.2000 is the reply notice sent by the tenant's counsel to the landlord's counsel, Ex.P.7 is the receipt book from

12.10.1999 to 24.8.2000, Ex.P.8 is also the receipt book from 10.9.2000 to 28.6.2002, Ex.P.9 is the ledger extract for the faslis 1396 to 1408

and Ex.P.10 is the ledger extract for the faslis 1409 to 1411.

9. So far as the documents marked on the part of the respondents are concerned, Ex.R.1 dated 23.2.2000 is the letter sent by the petitioner to the

respondent, Ex.R.2 dated 31.7.2000 is the legal notice issued by the landlord to the tenant, Ex.R.3 dated 11.8.2000 is the reply notice issued by

the respondent with acknowledgement due, Ex.R.4 dated 24.8.2000 is the notice issued by the landlord to the tenant, Ex.R.5 dated 19.9.2000 is

the notice issued by the tenant, Ex.R.6 dated 25.9.2000 is the reply notice, Ex.R.7 dated 20.10.2000 is the copy of the letter sending cheque for

the month of October, 2000 with acknowledgement due, Exs.R.8 dated 24.11.2000 and R.9 dated 3.1.2001 are the same for the month of

October, 2000, Ex.R.10 dated 21.2.2001 is the copy of the letter sending two cheques for January and February, 2001, Ex.R.11 is the copy of

the plaint served on the defendant in O.S. No. 53 of 2001 on the file of the Court of District Munsif, Polur, Ex.R.12 dated 29.11.1998 is the

receipt, Ex.R.13 dated 25.11.1998 is the traders bill and Ex.R.14 dated 23.11.1998 is yet another bill.

10. The Rent Controller, in consideration of all these documents in the context of the facts and circumstances of the case, has ultimately arrived at

the conclusion to order granting the relief as sought for, testifying the validity of which, the tenant has come forward to file the above civil revision

petition.

11. The short question which has been legally raised on the part of the petitioner/tenant that has to be decided is whether the RCOP filed by the

landlord is maintainable since the buildings owned by public trust or charitable institution were exempted from the provisions of the Tamil Nadu

Buildings (Lease and Rent Control) Act, 1960?

12. Even the trial Court dealing with the said objection raised on the part of the tenant has aptly dealt with the subject and has concluded that it is

not a matter to be testified in the Interlocutory Application which has been specifically filed invoking the provisions of Section 11 of the TNBLRC

Act and it is wide open for the tenant to raise the jurisdiction question at the time when the main RCOP is dealt with and since the said question

was the only question awaiting answer, it had to be answered in the affirmative and the same had been answered accordingly by the trial Court on

elaborate discussions held on the subject and this Court does not find any illegality or legal infirmity in the order passed by the Rent Controller and

therefore the interference of this Court sought to be made into the well considered and merited order passed by the trial Court is neither necessary

nor warranted in the circumstances of the case and hence the following order:

In result,

(i) the above civil revision petition fails and the same is dismissed.

(ii) The fair and decretal order dated 3.6.2002 made in I.A. No. 20 of 2001 in R.C.O.P. No. 3 of 2000 by the Rent Controller and the Court of District Munsif, Polur is confirmed.

(iii) Since it is a long pending matter, a further direction is issued to the Rent Controller and the Court of District Munsif, Polur to expedite the enquiry in the RCOP. No. 3 of 2000 so as to decide the same on merits and in accordance with law, at any cost within four months from the date of receipt of this order.

However, in the circumstances of the case, there shall be no order as to costs.

Consequently, C.M.P. No. 9438 of 2002 is also dismissed.